

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

CYNTHIA RUSSO, LISA BULLARD,
RICARDO GONZALES, INTERNATIONAL
BROTHERHOOD OF ELECTRICAL
WORKERS LOCAL 38 HEALTH AND
WELFARE FUND, INTERNATIONAL
UNION OF OPERATING ENGINEERS
LOCAL 295-295C WELFARE FUND, AND
STEAMFITTERS FUND LOCAL 439, on
Behalf of Themselves and All Others Similarly
Situated,

Plaintiffs,

v.

WALGREEN CO.,

Defendant.

Civil No. 17-cv-2246

Judge Edmond E. Chang
Magistrate Judge Sheila Finnegan

**JOINT AGREED MOTION TO SET A
BRIEFING SCHEDULE**

Plaintiffs Cynthia Russo, Lisa Bullard, Ricardo Gonzales, International Brotherhood of Electrical Workers Local 38 Health and Welfare Fund, International Union of Operating Engineers Local 295-295c Welfare Fund, and Steamfitters Fund Local 439 (collectively, “Plaintiffs”) and Defendant Walgreen Co. (“Walgreens”) (collectively, with Plaintiffs, the “Parties”) jointly move to set a briefing schedule related to Plaintiffs’ Motion for Class Certification (ECF No. 554) and the parties’ Rule 702 motions to exclude certain expert opinions (“*Daubert* motions”), as set forth in the parties’ June 26, 2023 Joint Status Report (ECF No. 614), as well as certain additional motions Walgreens intends to file. In support of the Motion, the Parties state as follows:

1. By Agreed Order dated October 21, 2022 (ECF No. 545), the Court entered the

deadlines for the submission of class certification briefing and expert reports (the “Briefing Schedule”). The Agreed Order included a statement that “if there are Daubert motions, the district judge will consider them with class briefing.” *Id.* As discussed below, the Briefing Schedule did not set forth a deadline for: (i) Walgreens’ reply briefs to its *Daubert* motions; (ii) Walgreens’ oppositions to or Plaintiffs’ reply briefs to Plaintiffs’ *Daubert* motions; the filing of (iii) a motion for leave to file a sur-reply and sur-rebuttal expert reports and an opposition and reply to that motion; (iv) motions for leave to depose Walgreens’ experts that file sur-rebuttal expert reports; (v) motions to exclude, in whole or in part, Plaintiffs’ experts’ rebuttal reports and an opposition and reply to that motion; (vi) responses and replies to pending Rule 702 motions; or (vi) any other briefing in response to the aforementioned motions that may be necessary.

2. On November 17, 2022, Plaintiffs filed their Motion for Class Certification (ECF No. 554) and two expert reports (ECF Nos. 553-44, 553-45).

3. On March 17, 2023, Walgreens filed its opposition to Plaintiffs’ Motion for Class Certification (ECF No. 587), five expert reports (ECF Nos. 586-1, 586-2, 586-17, 586-48, and one report served but not filed), and two *Daubert* motions related to Plaintiffs’ expert reports (ECF Nos. 581, 583).

4. On June 20, 2023, Plaintiffs filed a reply in support of their Motion for Class Certification (ECF No. 602), oppositions to Walgreens’ *Daubert* motions (ECF Nos. 600, 607), three rebuttal expert reports (ECF Nos. 609-1, 609-2, 609-3), including one from a newly disclosed expert, Dr. Susan Hayes, and four *Daubert* motions related to Walgreens’ expert reports (ECF Nos. 599, 604-606).

5. Plaintiffs have agreed to make Dr. Susan Hayes available for a deposition regarding her rebuttal report (ECF No. 609-3), and have agreed to make Dr. Lynette Hilton available for a two-hour deposition regarding her rebuttal report (ECF No. 609-1), limited to: (i) Paragraphs 13-

19 and 42-44 of her rebuttal report; and (ii) any new documents Dr. Hilton produces associated with her rebuttal report, including workpapers. Following those depositions, Walgreens anticipates seeking leave from the Court to file a sur-reply, as well one or more sur-rebuttal expert reports, which Plaintiffs intend to oppose. Walgreens also intends to file motions to exclude parts or all of one or more of Plaintiffs' experts' rebuttal reports, which Plaintiffs intend to oppose. Plaintiffs reserve their right to seek to file a motion for leave to take depositions in response to any proposed sur-rebuttal expert reports Walgreens files. Both parties reserve their rights to seek other relief as deemed necessary.

6. The Parties have met and conferred and agree to the briefing schedule in the proposed order attached to this motion (the "Proposed Briefing Schedule"). Accordingly, for good cause shown, the Parties request that the Court enter the proposed order containing the Proposed Briefing Schedule.

DATED: July 12, 2023

s/Michael Scott Leib

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was filed electronically through the Court's Electronic Case Filing System, which will then send a notification of such filing to the registered participants as identified on the Notice of Electronic Filing.

s/ Michael Scott Leib
Michael Scott Leib